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EXAMINER	
REYNOLDS, STEVEN ALAN	
ART UNIT	PAPER NUMBER
3728	
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09/28/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/748,889	MUCHIN ET AL.	
	Examiner	Art Unit	
	Steven Reynolds	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 December 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19 and 86-123* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7,9-19,86-111 and 114-123* is/are rejected.

7)☒ Claim(s) *8,112 and 113* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This office action is in response to the reply filed on 1/3/2006, wherein claims 15 and 19 were amended and claims 86-123 were added.

Claim Objections

2. Claims 112 and 113 are objected to because of the following informalities: In claim 112, line 2; "a second **temperature**" should be "a second **aperture**". In claim 113, line 2; "a second **nature**" should be "a second **aperture**". Appropriate correction is required.

3. Claim 106 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 107 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The graphics claimed in claim 107 cannot have distinct surface textures if in claim 1 the batteries are identical.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

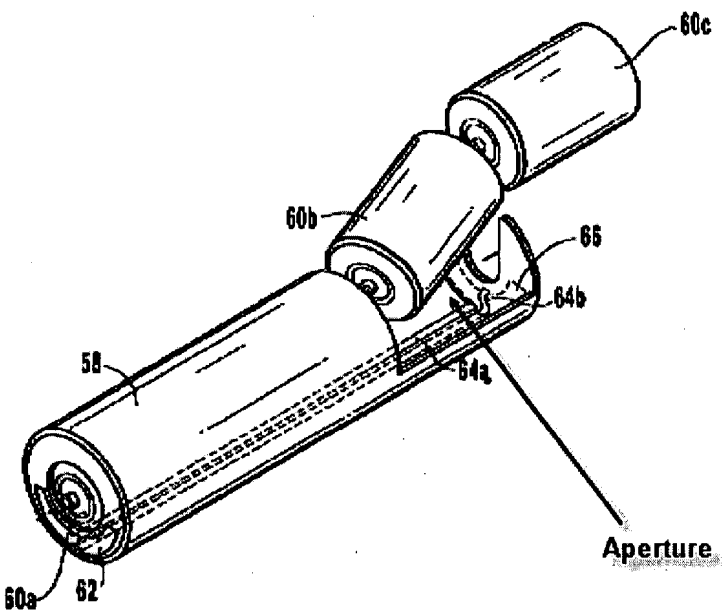
7. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1, 10-19, 86, 87-111 and 114-123 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watterson et al. (US 2002/0149928). Watterson et al. discloses a battery bundle (housing 11, See Fig. 2 embodiment) comprising a first battery having a first outer surface; a second battery having a second outer surface; a packaging binding the first battery and the second battery (cartridge 58); the package has an aperture (See figure below) adjacent to said outer surfaces of at least one battery; said battery bundle includes additional batteries bound in the bundle (See Fig. 4 embodiment); means for enabling manipulation of the first battery to facilitate viewing of the first graphic (aperture shown below); means for enabling manipulation of the second

battery to facilitate viewing of the second graphic (Removing said first battery through said aperture, enabling manipulation of said second battery through said aperture); means for enabling rotation of either the first or second battery while within the package (aperture allows user to rotate the batteries); an opening (aperture shown below) to enable manual contact with the first or second battery; the packaging is capable of binding batteries for retail distribution with the device; the package can be considered a flexible membrane or film as it is made of plastic and is inherently flexible; a support portion including a hang hole (30); and the support portion including a pedestal (end wall of housing 11, wherein hang strap 30 is attached is considered a pedestal for standing the housing on end).

Watterson et al. discloses the claimed invention except for the first graphic being distinct from the second graphic and the first and second battery having a distinct outer surface texture. It is well known and would have been obvious to use different brands of batteries together in the cartridge if that is all the consumer has to use in combination. Therefore, the graphics on the different brands of batteries will be distinct from each other and inherently have graphics in two different locations. It is also well known by one of ordinary skill in the art that all batteries have an outer surface texture.



Regarding claims 18, 19, 93-96, 99, 100-104, 115 and 121-123, although Watterson et al. is silent about the contents of the graphics on the batteries, it is well known in the art for the graphics on a battery to include the following: the brand name logo (which is artwork and an object) or any single word, graphics targeting the group of consumers who intend to purchase the brand of batteries and graphics extending 360 degrees about the outer surface of the battery.

Regarding claims 91, 92 and 98, Watterson et al. as described above is capable of holding two batteries of the same brand with distinct logos, as one battery can be rechargeable and the second battery could be a regular battery. These batteries would have distinct graphics, as the rechargeable battery would include the graphic "rechargeable".

Regarding claim 100, associated with the graphics, the genus is a certain brand of battery and the two species of that genus are rechargeable and non-rechargeable.

Further, with respect to the graphics and the subjects of the graphics, e.g., claims 100-104, 115 and 121-123, they are printed matter that are absent of any new and unobvious functional relationship with respect to the substrate (battery). Accordingly, such printed matter has no patentable weight. See in re Lowry, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994); In re Ngai, 367 F.3d 1336, 70 USPQ2d 1862 (Fed. Cir. 2004).

Regarding claims 107-109, the batteries would have a distinct surface texture as it is well known that the outer label of batteries have been made from paper, which would have a different surface texture than the batteries made from plastic film or metal, the scents of these materials would be different as well. Further, the scent of the paper type battery can be selectively activated by scratching.

Regarding claim 121, the related theme is the alphabet, and each of the two graphics have certain letters from the alphabet present.

9. Claims 1-7, 9, 11, 17-19, 86, 91-111 and 114-123 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curiel (US 4,648,013). Regarding claims 1-7, 9, 11, 17, 86, 97 and 114, Curiel discloses a battery bundle comprising a first battery having a first outer surface; a second battery having a second outer surface; a packaging binding the first battery and the second battery (tube 39); the packaging has at least one transparent portion (transparent wall 38) adjacent to at least portions of the first graphic and the second graphic; the transparent portion extends substantially completely about the first outer surface and the second outer surface; the first battery and the second

battery are substantially aligned end-to-end in the packaging (See Fig. 8 embodiment); the battery bundle includes batteries in addition to the first battery and the second battery and wherein all of the batteries bound by the packaging are aligned end- to-end in the packaging (See Fig. 8 embodiment); the packaging includes a single tube containing all of the batteries; and the first battery extends along an axis and wherein the packaging includes a wall (14) extending across and intercepting the axis; and the packaging is capable of binding batteries for retail distribution with the device. Curiel discloses all the limitations of the claims except for the first graphic being distinct from the second graphic and the first and second battery having a distinct outer surface texture.

It is well known and would have been obvious to use different brands of batteries together in the cartridge if that is all the consumer has to use in combination. Therefore, the graphics on the different brands of batteries will be distinct from each other and have graphics in two different locations. It is also well known by one of ordinary skill in the art that all batteries have an outer surface texture.

Regarding claims 18, 19 and 96, although Curiel is silent about the contents of the graphics on the batteries, it is well known in the art for the graphics on a battery to include the following: the brand name logo (which is artwork), graphics targeting the group of consumers who intend to purchase the brand of batteries and graphics extending 360 degrees about the outer surface of the battery.

Regarding claims 107-109, the batteries would have a distinct surface texture as it is well known that the outer label of batteries have been made from paper, which

would have a different surface texture than the batteries made from plastic film or metal, the scents of these materials would be different as well. Further, the scent of the paper type battery can be selectively activated by scratching.

Further, with respect to the graphics and the subjects of the graphics, e.g., claims 100-104, 115 and 121-123, they are printed matter that are absent of any new and unobvious functional relationship with respect to the substrate (battery). Accordingly, such printed matter has no patentable weight. See in re Lowry, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994); In re Ngai, 367 F.3d 1336, 70 USPQ2d 1862 (Fed. Cir. 2004).

Response to Arguments

10. Contrary to applicant's argument regarding claim 19: the claim does not exclude artwork that is previously related to a battery and/or its use, the claim states "**or** reproductions of images (finger, cigarette, money roll) not previously related to a battery and/or its use".

11. Contrary to applicant's argument that Watterson does not disclose packaging binding a first and second battery: Cartridge (58) of Watterson is a container in which batteries are packed; therefore the cartridge of Watterson can be referred to as a packaging.

12. Contrary to applicant's argument that the cartridge opening of Watterson does not extend adjacent to both the first and second graphics: "adjacent" is a relative term,

when the first and second batteries are present in the cartridge their graphics are adjacent to the cartridge opening.

Allowable Subject Matter

13. Claims 8, 112 and 113 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Reynolds whose telephone number is (571)272-9959. The examiner can normally be reached on Monday-Friday 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SR
9/24/07

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